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**APR 27 2006**

**OFFICE OF PETITIONS**

In re Application of  
Diana Zanini et al.  
Application No. 10/028,400  
Filed: December 20, 2001  
Attorney Docket No. VTN-568

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**ON PETITION**

This is a decision on the petition, filed March 9, 2006 under 37 CFR 1.137(b)<sup>1</sup>, to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A Final Office Action was mailed February 9, 2005. In response thereof, an amendment and a Notice of Appeal were filed on May 11, 2005 with a certificate of mail pursuant to 37 CFR 1.8, dated May 9, 2005. By advisory action, applicants were advised that the amendment did not place the application in condition for allowance and thus was not entered. The Notice of Appeal, however was entered and required the filing of an Appeal Brief within two months of the filing of the Notice of Appeal. As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed May 11, 2005 with a certificate of mail pursuant to 37 CFR 1.8, dated May 9, 2005, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the above-identified application became abandoned on July 12, 2005. See MPEP 1215.04. A notice regarding the

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<sup>1</sup> A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:  
(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

appeal was mailed February 17, 2006.<sup>2</sup>

With the instant petition to revive, petitioners have submitted an amendment as the response required under 37 CFR 1.137(b).

The petition does not however satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of February 9, 2005, within the time period for response. The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application. Since the amendment submitted with the petition has been referred to the examiner, who has indicated that the amendment does not *prima facie* place the application in condition for allowance, the response required for a renewed petition must be a Notice of Appeal and requisite fee, or the filing of a continuing application under the terms set forth in 1031 O.G. 11.

Petitioner must submit a proper reply to the final Office action mailed on February 9, 2005, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

The petition fee in the amount of \$1500.00 has been charged to deposit account no. 10-0750 per the authorization included on the face of the petition.

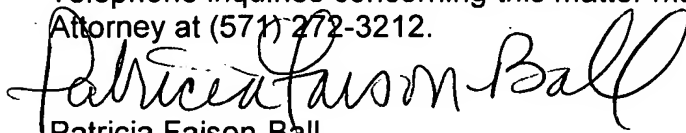
A courtesy copy of an Advisory Action is included.

Further correspondence with respect to this matter should be addressed as follows:

By mail:        Mail Stop Petitions  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria VA 22313-1450

By FAX:        (571) 273-8300  
                  ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

  
Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions

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<sup>2</sup>A response was purportedly filed June 6, 2005, prior to the maximum period obtainable with an extension of time, but the date of the submission was not proven to the satisfaction of the Commissioner and thus was not accepted as timely filed.